

AMENDED IN ASSEMBLY APRIL 21, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 320**

**Introduced by Assembly Member Correa**

February 7, 2003

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~~An act to amend Section 1770 of the Civil Code, relating to deceptive practices. An act to add Section 143.5 to the Business and Professions Code, relating to professions and vocations.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 320, as amended, Correa. ~~Deceptive practices: telephone solicitations—Professions and vocations: licensees: settlement agreements.~~

*Existing law provides that it is a cause for suspension, disbarment, or other discipline for an attorney to agree or seek agreement that the professional misconduct or the terms of a settlement of a claim for professional misconduct is not to be reported to the professional's disciplinary agency, or to agree or seek agreement that the plaintiff shall withdraw a disciplinary complaint or not cooperate with an investigation or prosecution conducted by the disciplinary agency. These provisions apply to an attorney who is a party or who is acting as an attorney for a party.*

*This bill would prohibit a licensee of a profession or vocation regulated by the Department of Consumer Affairs or various boards from including a provision in an agreement to settle a civil dispute that prohibits the other party in that dispute from contacting, filing a complaint with, or cooperating with the department or board, or that*

*requires the other party to withdraw a complaint from the department or board.*

~~The Consumers Legal Remedies Act prohibits unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result, or which results in, the sale or lease of goods or services to any consumer, as specified. Pursuant to that act, existing law prohibits disseminating an unsolicited prerecorded message to any person by telephone without first informing that person of specified information in an unrecorded, natural voice.~~

~~This bill would further prohibit this dissemination to any mechanical or electronic answering device without the prerequisite information, as specified.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     ~~SECTION 1. Section 1770 of the Civil Code is amended to~~
- 2     ~~SECTION 1. Section 143.5 is added to the Business and~~
- 3     ~~Professions Code, to read:~~
- 4     ~~143.5. (a) A licensee of a profession or vocation subject to the~~
- 5     ~~oversight of the Department of Consumer Affairs or one of the~~
- 6     ~~boards established pursuant to Division 2 (commencing with~~
- 7     ~~Section 500), Division 3 (commencing with Section 5000), or~~
- 8     ~~Division 4 (commencing with Section 10000) shall not include a~~
- 9     ~~provision in an agreement to settle a civil dispute, whether the~~
- 10    ~~agreement is made before or after the commencement of a civil~~
- 11    ~~action, that prohibits the other party in that dispute from~~
- 12    ~~contacting, filing a complaint with, or cooperating with the~~
- 13    ~~department or board, or that requires the other party to withdraw~~
- 14    ~~a complaint from the department or board. A provision of that~~
- 15    ~~nature is void as against public policy.~~
- 16    ~~(b) An attorney who includes a provision described in~~
- 17    ~~subdivision (a) in a settlement agreement subject to this section~~
- 18    ~~shall be subject to disciplinary action by the State Bar of~~
- 19    ~~California as provided for matters involving settlement of claims~~
- 20    ~~for professional misconduct in Section 6090.5.~~
- 21    ~~(c) As used in this section, "board" shall have the same~~
- 22    ~~meaning as defined in Section 22, and "licensee" means a person~~



1 *that has been granted a license, as that term is defined in Section*  
2 *23.7.*

3 *read:*

4 ~~1770. (a) The following unfair methods of competition and~~  
5 ~~unfair or deceptive acts or practices undertaken by any person in~~  
6 ~~a transaction intended to result or which results in the sale or lease~~  
7 ~~of goods or services to any consumer are unlawful:~~

8 ~~(1) Passing off goods or services as those of another.~~

9 ~~(2) Misrepresenting the source, sponsorship, approval, or~~  
10 ~~certification of goods or services.~~

11 ~~(3) Misrepresenting the affiliation, connection, or association~~  
12 ~~with, or certification by, another.~~

13 ~~(4) Using deceptive representations or designations of~~  
14 ~~geographic origin in connection with goods or services.~~

15 ~~(5) Representing that goods or services have sponsorship,~~  
16 ~~approval, characteristics, ingredients, uses, benefits, or quantities~~  
17 ~~which they do not have or that a person has a sponsorship,~~  
18 ~~approval, status, affiliation, or connection which he or she does not~~  
19 ~~have.~~

20 ~~(6) Representing that goods are original or new if they have~~  
21 ~~deteriorated unreasonably or are altered, reconditioned,~~  
22 ~~reclaimed, used, or secondhand.~~

23 ~~(7) Representing that goods or services are of a particular~~  
24 ~~standard, quality, or grade, or that goods are of a particular style~~  
25 ~~or model, if they are of another.~~

26 ~~(8) Disparaging the goods, services, or business of another by~~  
27 ~~false or misleading representation of fact.~~

28 ~~(9) Advertising goods or services with intent not to sell them~~  
29 ~~as advertised.~~

30 ~~(10) Advertising goods or services with intent not to supply~~  
31 ~~reasonably expectable demand, unless the advertisement discloses~~  
32 ~~a limitation of quantity.~~

33 ~~(11) Advertising furniture without clearly indicating that it is~~  
34 ~~unassembled if that is the case.~~

35 ~~(12) Advertising the price of unassembled furniture without~~  
36 ~~clearly indicating the assembled price of that furniture if the same~~  
37 ~~furniture is available assembled from the seller.~~

38 ~~(13) Making false or misleading statements of fact concerning~~  
39 ~~reasons for, existence of, or amounts of price reductions.~~

~~(14) Representing that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law.~~

~~(15) Representing that a part, replacement, or repair service is needed when it is not.~~

~~(16) Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not.~~

~~(17) Representing that the consumer will receive a rebate, discount, or other economic benefit, if the earning of the benefit is contingent on an event to occur subsequent to the consummation of the transaction.~~

~~(18) Misrepresenting the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction with a consumer.~~

~~(19) Inserting an unconscionable provision in the contract.~~

~~(20) (A) Advertising that a product is being offered at a specific price plus a specific percentage of that price unless both of the following apply:~~

~~(i) The total price is set forth in the advertisement, which may include, but is not limited to, shelf tags, displays, and media advertising, in a size larger than any other price in that advertisement.~~

~~(ii) The specific price plus a specific percentage of that price represents a markup from the seller's costs or from the wholesale price of the product.~~

~~(B) This subdivision does not apply to in-store advertising by businesses which are open only to members or cooperative organizations organized pursuant to Division 3 (commencing with Section 12000) of Title 1 of the Corporations Code where more than 50 percent of purchases are made at the specific price set forth in the advertisement.~~

~~(21) Selling or leasing goods in violation of Chapter 4 (commencing with Section 1797.8) of Title 1.7.~~

~~(22) (A) Disseminating an unsolicited prerecorded message by telephone without an unrecorded, natural voice first informing the person, or any mechanical or electronic answering device, answering the telephone, of the name of the caller or the organization being represented, and either the address or the~~

1 telephone number of the caller, and without obtaining the consent  
2 of that person to listen to the prerecorded message.

3 (B) This subdivision does not apply to a message disseminated  
4 to a business associate, customer, or other person having an  
5 established relationship with the person or organization making  
6 the call, to a call for the purpose of collecting an existing  
7 obligation, or to any call generated at the request of the recipient.

8 (23) The home solicitation, as defined in subdivision (h) of  
9 Section 1761, of a consumer who is a senior citizen where a loan  
10 is made encumbering the primary residence of that consumer for  
11 the purposes of paying for home improvements and where the  
12 transaction is part of a pattern or practice in violation of either  
13 subsection (h) or (i) of Section 1639 of Title 15 of the United States  
14 Code or subsection (c) of Section 226.32 of Title 12 of the Code  
15 of Federal Regulations.

16 A third party is not liable under this subdivision unless there was  
17 an agency relationship between the party who engaged in home  
18 solicitation and the third party, or the third party had actual  
19 knowledge of, or participated in, the unfair or deceptive  
20 transaction. A third party who is a holder in due course under a  
21 home solicitation transaction is not liable under this subdivision.

22 (b) (1) It is an unfair or deceptive act or practice for a mortgage  
23 broker or lender, directly or indirectly, to use a home improvement  
24 contractor to negotiate the terms of any loan that is secured,  
25 whether in whole or in part, by the residence of the borrower and  
26 which is used to finance a home improvement contract or any  
27 portion thereof. For purposes of this subdivision, “mortgage  
28 broker or lender” includes a finance lender licensed pursuant to  
29 the California Finance Lenders Law (Division 9 (commencing  
30 with Section 22000) of the Financial Code), a residential mortgage  
31 lender licensed pursuant to the California Residential Mortgage  
32 Lending Act (Division 20 (commencing with Section 50000) of  
33 the Financial Code), or a real estate broker licensed under the Real  
34 Estate Law (Division 4 (commencing with Section 10000) of the  
35 Business and Professions Code).

36 (2) This section may not be construed to either authorize or  
37 prohibit a home improvement contractor from referring a  
38 consumer to a mortgage broker or lender by this subdivision.  
39 However, a home improvement contractor may refer a consumer  
40 to a mortgage lender or broker if that referral does not violate

1 ~~Section 7157 of the Business and Professions Code or any other~~  
2 ~~provision of law. A mortgage lender or broker may purchase an~~  
3 ~~executed home improvement contract if that purchase does not~~  
4 ~~violate Section 7157 of the Business and Professions Code or any~~  
5 ~~other provision of law. Nothing in this paragraph shall have any~~  
6 ~~effect on the application of Chapter 1 (commencing with Section~~  
7 ~~1801) of Title 2 to a home improvement transaction or the~~  
8 ~~financing thereof.~~

